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Kurt A. Dobbins

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EXAMINER

BURGESS, BARBARA N

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/673,157	Applicant(s) DOBBINS, KURT A.	
	Examiner BARBARA N. BURGESS	Art Unit 2457	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5-2-08</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is in response to Amendment filed September 28, 2010. Claims 1-27 are presented for further examination. Claims 28-34 are newly added and presented for initial examination.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 2 is rejected under 35 USC 101 as being non-statutory. Generally, program modules include routines, programs, components, data structures, logic, etc. that perform particular tasks and/or implement particular abstract data types can be interpreted as hardware, software or a combination thereof. The claim is software per se based on the disclosure since such claims lacking "hardware".

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2,10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 2 recites the limitations "*the indication* specifying an increased", "*the transmission parameters*" in lines 6, 8 respectively. There is insufficient antecedent basis for this limitation in the claim.

4. Claim 10 recites the limitation "the *transportation parameters*" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8, 10-23, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Der Schaar (hereinafter "Van", US Patent Publication 2003/0135863 A1) in view of Feuerstraeter et al. (hereinafter "Feu", US Patent Publication 2003/0123393 A1) and further view of Heller et al. (hereinafter "Heller", US Patent Publication 2005/0163073 A1).

As per claim 1, Van discloses a method of offering preferred transport in a network, the method comprising:

receiving a first part of a content transmission from a content provider in the network at a transmission device that transmits the content between the content provider and a

destination of the content (paragraphs [0025, 0040, 0048, 0074]);
receiving an indication of transport parameters in the network at the transmission device (paragraphs [0027, 0032]);
receiving a second part of the content transmission in the network from the content provider (paragraphs [0040, 0046]);
the transmitting device transmitting the second part of the content transmission in the network in accordance with the predetermined transport parameters to the destination (paragraphs [0068, 0070]).

Van does not explicitly disclose:

receiving an indication of predetermined transport parameters in the network, the indication being contained in the received first part of the content transmission and the indication specifying an increased transmission speed for at least a duration of the content transmission;

However, in analogous art, Feu teaches identifying a received capability associated with one or more priority levels of Ethernet traffic for a network device. The subset of content is sent to a destination device. A control message is received having class of service, type of service, quality of service indication denoting a priority level. Once this message is received, the content forwarding is resumed according to the priority level of the control message. The message invokes flow control on the traffic. It can slow down or quicken traffic performance (paragraphs [0017-18, 0030-0031, 0035, 0038-0039, 0047]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Feu's predetermined transport parameters and indication associated with the received first part of the content transmission specifying increased transmission speed in Van's method enabling communication for a given priority level.

Van, in view of Feu, does not explicitly disclose:

Setting up and storing entries in a switching table identifying the content transmission based on the content provider and the destination, the entries in the switching table storing the predetermined transport parameters specified by the indication;

Accessing the switching table to determine the predetermined transport parameters for the content transmission.

However, in an analogous art, Heller teaches identifying and applying session services to a wireless link including identifying a packet flow corresponding to a received message by employing a flow identifier and filter. A flow table identifies the packet flow by flow ID. A transmission profile table has transmission parameters which describe each packet flow (paragraphs [0027-0030], Abstract).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Heller's switching table in Van's method in order to apply a session service to a particular message packet by identifying the flow through either the flow ID or profile entry, and mapping the profile entry to the corresponding session service entries.

As per claim 2, Van discloses a transmission device comprising:

a data receiver configured to receive a first part of a content transmission and an indication of transport parameters associated with the content of the content transmission network from a content provider (paragraphs [0027, 0032]);

a service logic for grouping the first part of the content transmission and subsequent parts of the content transmission as a communications flow (paragraphs [0025, 0040]);

a transmission logic for determining the transmission parameters of the content according to the indication of transport parameters (paragraphs [0068, 0070]);

a switching apparatus for transporting the first part and subsequent parts of the content transmission in the network to a communications port of a destination of the content according to the communications flow determined by the service logic (paragraphs [0046, 0070]);

a data transmitter configured to transmit the subsequent parts of the content transmission in the network to the destination in conjunction with the communications port in accordance with the transmission parameters (paragraphs [0068, 0070]).

Van does not explicitly disclose:

receiving an indication of predetermined transport parameters in the network, the indication being contained in the received first part of the content transmission, the indication specifying an increased transmission speed for at least a duration of the content transmission.

However, in analogous art, Feu teaches identifying a received capability associated with

one or more priority levels of Ethernet traffic for a network device. The subset of content is sent to a destination device. A control message is received having class of service, type of service, quality of service indication denoting a priority level. Once this message is received, the content forwarding is resumed according to the priority level of the control message. The message invokes flow control on the traffic. It can slow down or quicken traffic performance (paragraphs [0017-18, 0030-0031, 0035, 0038-0039, 0047]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Feu's predetermined transport parameters and indication associated with the received first part of the content transmission specifying increased transmission speed in Van's method enabling communication for a given priority level.

Van, in view of Feu, does not explicitly disclose:

A transport creation block for creating and storing entries in a switching table identifying the content transmission based on the content provider and a destination, the entries in the switching table storing the predetermined transport parameters;

A maintenance component for managing and deleting entries in the switching table that are no longer needed.

However, in an analogous art, Heller teaches identifying and applying session services to a wireless link including identifying a packet flow corresponding to a received message by employing a flow identifier and filter. A flow table identifies the packet flow

by flow ID. A transmission profile table has transmission parameters which describe each packet flow (paragraphs [0027-0030], Abstract).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Heller's switching table in Van's method in order to apply a session service to a particular message packet by identifying the flow through either the flow ID or profile entry, and mapping the profile entry to the corresponding session service entries.

As per claim 3, Van discloses the method according to claim 1, wherein the first part of the content transmission is a command for a particular content transmission (paragraph [0025]).

As per claim 4, Van discloses the method according to claim 3, wherein the command is a request command for a particular content transmission (paragraph [0019]).

As per claim 5, Van discloses the method according to claim 4, wherein the command is an HTTP GET request command (paragraph [0019]).

As per claim 6, Van does not explicitly disclose the method according to claim 5, wherein the command includes the indication of transport parameters, and wherein the indication of transport parameters includes a content tag.

However, in an analogous art, Feu teaches content received from a source at the host is tagged with priority level. The priority level gives details of flow of the content (paragraphs [0030-0031, claim 20]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Feu's content tag in Van's method in order to determine the priority level of the content.

As per claim 7, Van discloses the method according to claim 5, wherein the command includes information that is utilized in the return path for the content transmission (paragraph [0038]).

As per claim 8, Van does not explicitly disclose the method according to claim 5, further comprising:

receiving a response to the command, wherein the response includes a content tag.

However, in an analogous art, Feu teaches content received from a source at the host is tagged with priority level. The priority level give details of flow of the content (paragraphs [0030-0031, claim 20]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Feu's content tag in Van's method in order to determine the priority level of the content.

As per claim 10, Van discloses the method according to claim 1, wherein the transportation parameters include a preferred level of transport (paragraph [0028]).

As per claim 11, Van discloses the method according to claim 10, wherein the transport parameters include at least one selected from a group consisting of a predetermined amount of bandwidth, a predetermined quality of service, a predetermined transmission attribute, a predetermined amount of packet loss, and a predetermined amount of jitter (paragraph [0035]).

As per claim 12, Van discloses the method according to claim 1, further comprising: decrypting the indication of transport parameters (paragraph [0040]).

As per claim 13, Van discloses the method according to claim 1, wherein receiving a first part of the content transmission in the network includes receiving the first part of the content transmission in a node of the network along a transmission path of the content transmission (paragraph [0038]).

As per claim 14, Van discloses the method according to claim 1, wherein the content transmission includes application data (paragraph [0019]).

As per claim 15, Van discloses the transmission device according to claim 2, wherein the first part of the content transmission is a command for a particular content transmission (paragraph [0020]).

As per claim 16, Van discloses the transmission device according to claim 15, wherein the command is a request command for a particular content transmission (paragraph [0019]).

As per claim 17, Van discloses the transmission device according to claim 16, wherein the command is an HTTP GET request command (paragraph [0018]).

As per claim 18, Van does not explicitly disclose the transmission device according to claim 17, wherein the command includes the indication of transport parameters, and wherein the indication of transport parameters includes a content tag.

However, in an analogous art, Feu teaches content received from a source at the host is tagged with priority level. The priority level gives details of flow of the content (paragraphs [0030-0031, claim 20]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Feu's content tag in Van's method in order to determine the priority level of the content.

As per claim 19, Van discloses the transmission device according to claim 17, wherein the command identifies a return path for the content transmission (paragraph [0060]).

As per claim 20, Van does not explicitly disclose the transmission device according to claim 17, wherein the data receiver is further configured to receive a response to the command, wherein the response includes a content tag.

However, in an analogous art, Feu teaches content received from a source at the host is tagged with priority level. The priority level gives details of flow of the content (paragraphs [0030-0031, claim 20]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Feu's content tag in Van's method in order to determine the priority level of the content.

As per claim 21, Van discloses the transmission device according to claim 2, wherein the transport parameters include a preferred level of transport (paragraph [0028])

As per claim 22, Van discloses the transmission device according to claim 21, wherein the transport parameters include at least one selected from a group consisting of a predetermined amount of bandwidth, a predetermined quality of service, a predetermined transmission attribute, a predetermined amount of packet loss, and a predetermined amount of jitter (paragraph [0035]).

As per claim 23, Van discloses the transmission device according to claim 2, further comprising:

a decryption element configured to decrypt the indication of transport (paragraph [0040]).

As per claim 25, Van discloses a method of offering preferred transport in a peer-to-peer network, the method comprising:

receiving a first part of a content file transmission in the peer-to-peer network from a content provider at a transmission device that transmits the content between the content provider and a destination of the content (paragraph [0038, 0048, 0074]);

receiving an indication of transport parameters in the peer-to-peer network, the indication being associated with the content of the content file transmission at a transmission device that transmits the content between the content provider and a destination of the content (paragraph [0035]);

receiving a second part of the content file transmission in the peer-to-peer network at the transmission device (paragraph [0040]); and

the transmission device transmitting the second part of the content file transmission in the peer-to-peer network in accordance with the transport parameters (paragraph [0048]).

Van does not explicitly disclose:

receiving an indication of predetermined transport parameters in the network, the indication being contained in the received first part of the content transmission, the indication specifying an increased transmission speed for at least a duration of the content transmission.

However, in analogous art, Feu teaches identifying a received capability associated with one or more priority levels of Ethernet traffic for a network device. The subset of content is sent to a destination device. A control message is received having class of service, type of service, quality of service indication denoting a priority level. Once this

message is received, the content forwarding is resumed according to the priority level of the control message. The message invokes flow control on the traffic. It can slow down or quicken traffic performance (paragraphs [0017-18, 0030-0031, 0035, 0038-0039, 0047]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Feu's predetermined transport parameters and indication associated with the received first part of the content transmission specifying increased transmission speed in Van's method enabling communication for a given priority level.

Van, in view of Feu, does not explicitly disclose:

Setting up and storing entries in a switching table identifying the content transmission based on the content provider and the destination, the entries in the switching table specifying the predetermined transport parameters specified by the indication;

Accessing the switching table to determine the predetermined transport parameters for the content transmission.

However, in an analogous art, Heller teaches identifying and applying session services to a wireless link including identifying a packet flow corresponding to a received message by employing a flow identifier and filter. A flow table identifies the packet flow by flow ID. A transmission profile table has transmission parameters which describe each packet flow (paragraphs [0027-0030], Abstract).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Heller's switching table in

Van's method in order to apply a session service to a particular message packet by identifying the flow through either the flow ID or profile entry, and mapping the profile entry to the corresponding session service entries.

As per claim 26, Van does not explicitly disclose the method of claim 1, wherein the indication of predetermined transport parameters is contained in a content payload header of the content transmission.

However, Feu teaches the priority level embedded within the administrative section (header/footer) of the content (paragraph [0030]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Feu's indication of transport parameters contained in a content payload header in Van's method enabling communication for a given priority level.

As per claim 27, Van does not explicitly disclose the transmission device of claim 2, wherein the indication of predetermined transport parameters is contained in a content payload header of the content transmission.

However, Feu teaches the priority level embedded within the administrative section (header/footer) of the content (paragraph [0030]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Feu's indication of transport parameters contained in a content payload header in Van's method enabling communication for a given priority level.

3. Claims 9, 24, 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Der Schaar (hereinafter "Van", US Patent Publication 2003/0135863 A1) in view of Feuerstraeter et al. (hereinafter "Feu", US Patent Publication 2003/0123393 A1) and further view of Heller et al. (hereinafter "Heller", US Patent Publication 2005/0163073 A1) and further view of Syed (US Patent Publication 2003/0084108 A1).

As per claim 9, Van, in view of Feu and Heller, not explicitly disclose the method according to claim 1, further comprising:

authenticating a distribution allowed for the content transmission, and
the transmission device authorizing only the allowed distribution of the content transmission.

However, in an analogous art, Syed teaches a gateway receiving content from a content provider. The gateway is able to authenticate the content provider as well as the content. Authentication is based upon information stored in the content provider center database and client capabilities. Modes of authentication and methods of encryption include encryption public key, time stamp, authentication public key, digital signature (paragraphs [0049, 0170, 0188-189]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Syed's authentication in Van's method in order to provide better and more customized data according to the consumer device's capabilities.

As per claim 24, Van, in view of Feu and Heller, not explicitly discloses the transmission device according to claim 2, further comprising:

an authentication element configured to authenticate a distribution allowed for the content transmission;

an authorization element configured to authorize only allowed distribution of the content transmission.

However, in an analogous art, Syed teaches a gateway receiving content from a content provider. The gateway is able to authenticate the content provider as well as the content. Authentication is based upon information stored in the content provider center database and client capabilities. Modes of authentication and methods of encryption include encryption public key, time stamp, authentication public key, digital signature (paragraphs [0049, 0170, 0188-189]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Syed's authentication in Van's method in order to provide better and more customized data according to the consumer device's capabilities.

As per claims 28-34, Van, in view of Feu and Heller, not explicitly discloses:

an authentication element;

authentication key used to validate;

determining a signature, encryption, decryption.

However, in an analogous art, Syed teaches a gateway receiving content from a content provider. The gateway is able to authenticate the content provider as well as the content. Authentication is based upon information stored in the content provider center database and client capabilities. Modes of authentication and methods of encryption include encryption public key, time stamp, authentication public key, digital signature (paragraphs [0049, 0170, 0188-189]).

Therefore, one of ordinary skill in the art at the time the invention was made would have found it obvious to implement or incorporate Syed's authentication in Van's method in order to provide better and more customized data according to the consumer device's capabilities.

The Office notes the following argument(s):

(a) Claim 2 concerns a transmission device and a device is a machine. Thus the 101 rejection of claim 2 should be withdrawn.

(b) Office action is correct that Heller teaches the use of data table to store information. The applied reference does not teach or suggest a switching table that

stores predetermined transport parameters including an increased transmission speed for a duration of the content transmission.

(c) Applied references do not teach authenticating a distribution allowed for content transmission.

In response to:

(a) Applicant's argument has been fully considered but is not persuasive.

Having "a transmission device" in the preamble of the claim is not sufficient to overcome the 101 rejection. At least one hardware component must be in the body of the claim.

(b) Examiner thanks Applicant for admission of Heller teaching a data table to store packet information.

Feu teaches sending a control message specifying whether to (indication) to pause or start transmission of traffic. The message is sent to throttle transmission of at least a subset of traffic. The message selectively slows down or quickens a mere subset of traffic. The message can also change the priority level of traffic. For example, if priority of a traffic is lowered, then the traffic may be forwarded at a slower rate, if not paused. However, if priority is increased, the traffic may be started, if paused before, or forwarded at an increase. The information in the control message, e.g., class of service, type of service, quality of service, priority levels, is stored in a buffer (paragraphs [0003, 0017-18, 0030-31, 0033, 0035, 0037, 0047]).

Heller teaches tables and profiles storing the information presented by the control message. Quality of service and flow parameters that indicate the speed of traffic are stored in these tables and profiles (paragraphs [0018, 0033-34, 0037]).

Therefore, the combination of Feu and Heller indeed teaches a switching table that stores predetermined transport parameters including an increased transmission speed for a duration of the content transmission.

(c)

5. Applicant's argument has been considered but is moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BARBARA N. BURGESS whose telephone number is (571)272-3996. The examiner can normally be reached on M-F (8:00am-4:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Barbara N Burgess/
Examiner, Art Unit 2457

Barbara N Burgess
Primary Examiner
Art Unit 2457

December 17, 2010

/Barbara N Burgess/
Primary Examiner, Art Unit 2457